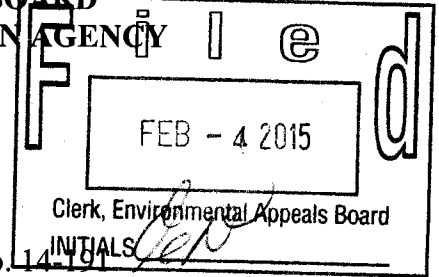


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re: )  
 )  
Gasco Energy, Inc. )  
 )  
Permit No. UT22291-10328 )  
 )

UIC Appeal No. 14-191

**ORDER GRANTING MOTION FOR VOLUNTARY REMAND**

On December 17, 2014, the Southern Utah Wilderness Alliance (“SUWA”) filed a petition with the Environmental Appeals Board (“Board”) seeking review of an Underground Injection Control (“UIC”) permit, number UT22291-10328 (“Permit”), which the U.S. Environmental Protection Agency Region 8 (“Region”) issued to Gasco Energy, Inc. (“Gasco”) pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26. The UIC permit is a Class II permit for an enhanced oil recovery well in Uintah County, Utah. *See* Permit at 1 (issued Nov. 27, 2014).

On January 12, 2015, the Region filed a motion requesting that the Board remand the Permit back to the Region for reconsideration. Region 8’s Motion for Voluntary Remand (“Motion”) at 1. The Region reports that SUWA does not oppose the motion. *Id.* at 3. The permittee, while initially indicating that it would oppose the motion, later filed a notice of withdrawal of opposition to the Region’s motion. *See* Gasco Energy, Inc.’s Notice of Intent to File Response in Opposition to Region 8’s Motion for Voluntary Remand at 1 (Jan. 13, 2015); Gasco Energy, Inc.’s Notice of Withdrawal of Opposition to Region 8’s Motion for Voluntary Remand at 1 (Jan. 21, 2015).

In its Motion, the Region states that it has reviewed the administrative record and has determined that it did not fully address one of SUWA's comments. Motion at 1. It requests a remand so that it may correct any factual errors and reconsider the public comments.<sup>1</sup> *Id.* at 1-2. The Region indicates that it will then "decide whether to reissue a final permit, with or without changes, or deny the permit." *Id.* at 2.

The Board has broad discretion to grant a remand request, and we have repeatedly held that "[a] voluntary remand is generally available where the permitting authority has decided to make a substantive change to one or more permit conditions, or otherwise wishes to reconsider some element of the permit decision before reissuing the permit." *In re Desert Rock Energy Co.*, 14 E.A.D. 484, 493 (EAB 2009) (quoting *In re Indeck-Elwood, LLC*, PSD Appeal No. 03-04, at 6 (EAB May 20, 2004) (Order Denying Respondent's Motion for Voluntary Partial Remand and Staying the Board's Decision on the Petition for Review)). As the Board has emphasized, it "typically grants a motion [for remand] where the movant shows good cause for its request and/or granting the motion makes sense from an administrative or judicial efficiency standpoint." *Id.* at 497; *accord In re Windfall Oil & Gas, Inc.*, UIC Appeal Nos. 14-04 through 14-62, at 2 (EAB June 10, 2014) (Order Granting Motion for Voluntary Remand to Allow Reconsideration of Permit Decision).

Here, the Region has shown good cause for its request. The Region has clearly expressed its intent to reconsider its final permit decision. *See* Motion at 1-2. Significantly, the Region indicates that it may have failed to adequately address a comment. *See* 40 C.F.R. § 124.17(a)(2)

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<sup>1</sup> The Region requests a remand pursuant to the discretionary authority of the Board, stating that it is not, at this time, unilaterally withdrawing the permit under 40 C.F.R. § 124.19(j). Motion at 3.

(requiring permit issuers to “[b]riefly describe and respond to all significant comments on the draft permit”). In addition, administrative efficiency will be served by allowing the Region to reconsider its decision and correct any errors. Moreover, none of the parties currently opposes the motion. For these reasons, the Board concludes that remand for reconsideration of the permit decision is appropriate in this case.

If, upon reconsideration, the Region determines that a new draft permit should be issued, it must provide an additional public comment opportunity under the applicable public participation procedures in 40 C.F.R. part 124. *See* 40 C.F.R. §§ 124.6, .10. There may also be other circumstances where the Region should reopen the public comment period. *See, e.g.*, 40 C.F.R. § 124.14; *In re Energy Answers Arecibo, LLC*, PSD Appeal Nos. 13-05 through 13-09, slip op. at 31-32 (EAB Mar. 25, 2014), 16 E.A.D. \_\_\_\_ (discussing permit changes and other modifications of a permit decision that require additional public comment), *appeal docketed sub nom. Sierra Club de P.R. v. U.S. EPA*, No. 14-1138 (D.C. Cir. July 17, 2014); *In re Indeck-Elwood, LLC*, 13 E.A.D. 126, 147-48 (EAB 2006) (requiring the permit issuer, if it decided to include a new permit condition, to reopen the comment period where permit issuer referred to such condition as a “significant change” and had not provided an opportunity for public comment on it). In addition, regardless of whether reopening of the public comment period is compelled by part 124 requirements, the Region has broad discretion under section 124.14(b) to determine whether “substantial new questions concerning a permit” merit an additional opportunity for public comment. *In re NE Hub Partners, LP*, 7 E.A.D. 561, 584 (EAB 1988) (“A reopening of the public comment period under section 124.14(b) largely depends on the Region’s discretion \* \* \*.”), *aff’d sub nom. Penn Fuel Gas, Inc. v. EPA*, 185 F.3d 862 (3rd Cir. 1999); *see also In re*

*Dominion Energy Brayton Point, LLC*, 13 E.A.D. 407, 416 & n.10 (EAB 2007) (discussing considerations that may inform a Regional Administrator's decision on the issue of reopening the public comment period).


The Board hereby GRANTS the Region's Motion for Voluntary Remand. Accordingly, UIC Appeal No. 14-191 is DISMISSED. In an Order issued January 14, 2015, the Board had held in abeyance the deadline for the filing of response briefs. *See* Order Shortening Deadline for Filing Opposition Briefs and Holding in Abeyance Deadline for Filing Response Briefs at 2. Today's Order renders moot any need for the parties to file response briefs.

After reconsideration, the Region must issue a new final permit decision pursuant to the part 124 permitting regulations. *See* 40 C.F.R. §§ 124.15(a), .17(a). SUWA may file a petition under 40 C.F.R. § 124.19(a) with the Board challenging the new final permit decision, and it must do so if it wishes to preserve the option of seeking judicial review of EPA's final action.<sup>2</sup> Petitions for review must be filed within 30 days after the Region serves notice of the revised final permit decision. *See* 40 C.F.R. § 124.19(a)(3).

So ordered.<sup>3</sup>

ENVIRONMENTAL APPEALS BOARD

Date: FEB - 4 2015

  
\_\_\_\_\_  
Kathie A. Stein  
Environmental Appeals Judge

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<sup>2</sup> Thus, the Board is directing that an appeal to the Board following the Region's decision on remand is required to exhaust administrative remedies before EPA. *See* 40 C.F.R. § 124.19(l)(2)(iii).

<sup>3</sup> The three-member panel deciding this matter is composed of Environmental Appeals Judges Leslye M. Fraser, Randolph L. Hill, and Kathie A. Stein. *See* 40 C.F.R. § 1.25(e)(1).

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Granting Motion for Voluntary Remand in the matter of Gasco Energy, Inc., UIC Appeal No. 14-191, were sent to the following persons in the manner indicated:

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Dated: FEB - 4 2015



Annette Duncan  
Secretary